two judges, who held that it must be proved that the act alleged was a crime in the United States, seems clearly preferable, though accompanied by the apparently mistaken assertion that it must also be a crime of the same *name* in Canada. The chance that an act which is one of the extradition crimes under the law of the surrendering country, will not be a crime at all in the demanding country, is certainly slight. And if the criminality of the act under the former law is shown, the burden of proof may well be cast on the prisoner to show that it is not a crime according to the law of the demanding country. But if he satisfies that burden of proof, he clearly has shown himself guiltless of crime, and should go free. It is believed that this view is in accord with the weight of authority. *In re Bellencontre*, [1891] 2 Q. B. 122; *Re Phipps*, 1 Ont. R. 586; Moore on Extradition, § 429.

When will Deceit lie on a Broken Promise? — In a recent Missouri case, *Traber* v. *Hicks*, 32 S. W. Rep. 1145, the defendant had contracted with the plaintiff to do a certain thing, without disclosing that a previous contract with a third party prevented performance. The plaintiff brought an action of deceit. The argument that the defendant's wrong was a mere breach of contract was dismissed by the court, and the plaintiff was allowed to recover, on the ground that there was concealment of a material fact, namely, the outstanding agreement with the third party, which it was the defendant's duty to disclose. As the other elements of deceit were present, the case was without doubt rightly decided. It suggests the query as to whether the court would have been willing to go one step further, and hold the defendant liable for deceit if he had not put it out of his power to perform, but had merely intended not to perform, at the time he made the promise.

This question has not often arisen, as generally the simpler remedy is to be obtained in an action of contract. But it becomes material in cases where, for one reason or another, it is either inexpedient or impossible to obtain redress in the latter form of action. What little authority there is on the point is in conflict. The latest treatise on torts contains an assertion to the effect that an action of deceit does not lie for failure to perform a promise, though the promisor never intended to perform, and the promisee has altered his position and suffered damage. 1 Jaggard on Torts, 583. And the view that such an act is not fraudulent has been taken by a few courts. *Fenwick* v. *Grimes*, 5 Cranch C. C. 439; *Banque Franco-Egyptienne* v. *Brown*, 34 Fed. Rep. 162, 192. On the other hand, it is generally held that preconceived design in a buyer not to pay for the goods is such fraud as will vitiate the sale. (See the exhaustive opinion of Doe, J., in *Stewart* v. *Emerson*, 52 N. H. 301.) And in other cases a promise made without intent to perform, merely to induce some act on the part of the promisee, has been held fraudulent. *Dowd* v. *Tucker*, 41 Conn. 197; *Goodwin* v. *Horne*, 60 N. H. 485.

The simple question, apparently, is whether there is any misrepresentation of a present fact. As a promise relates to the future, courts have jumped at the conclusion that there is none. But a promise to do an act in the future certainly carries with it a representation of present intention to perform, just as certainly as the promise in *Traber* v. *Hicks*, included a representation that the promisor had not put it out of his power to perform. And that a representation of present intention is a statement of

fact has rarely been disputed since Bowen, L. J., declared, in *Edgington* v. *Fitzmaurice*, L. R. 29 Ch. Div. 459, that "the state of a man's mind is as much a fact as the state of his digestion." If, then, this misrepresentation of a present fact is accompanied by the other elements of deceit, it seems clear on principle that the action should be allowed. See 1 Bigelow on Fraud, 484. Whether or not it would be expedient in practice is quite another question.

SPECIAL LEGISLATION — CLOSING BARBER SHOPS ON SUNDAY. — The constitutionality of so called "special legislation" has again been denied in Illinois. An act to close barber shops on Sunday was reviewed by a minor court in *The People* v. *Eden* (28 Chicago Legal News, 100), and decided squarely on the ground that the legislature made an arbitrary discrimination against a special class. Although the court remarked upon there being a deprivation of liberty and property, it admitted at the end of the decision that, had the law applied to all kinds of business, it would have been valid. The objection was, then, not that the legislature had forbidden an occupation on Sunday, but that it had singled out a particular trade, and had not extended its prohibition to others also. It is submitted that this omission is a matter of legislative discretion, and does not furnish a proper occasion for interference by the judiciary.

The way in which American courts have come to exercise a supervision over legislation, and the limits to which such supervision is subject, have been discussed elsewhere. (Professor Thayer, in 7 HARVARD LAW REVIEW, 129. See also 9 HARVARD LAW REVIEW, 277.) It is enough to say here that the making of laws has been intrusted to the legislative branch of the government, and so long as the actions of the legislature are such that one could conceive them to have been actuated by some rational public reason, the legislature must be deemed to have acted within its province. An analogy may be found in the discretion given to a jury on matters of fact; a verdict will not be set aside so long as a reasonable man could possibly have entertained the jury's opinion.

Applying this test to the subject of special legislation, can it be said, for example, that a reasonable man could not by any possibility have seen fit to apply a Sunday closing rule to barber shops without at the same time applying it to other trades? Some rational reason must be found, it is said, for singling out barber shops; another way of putting it is to say that some rational reason must be shown why the legislature did not go farther. It would not be argued that the legislature must go, if at all, to the full length of closing all shops, including that of the apothecary. Some line must be drawn; and it is conceivable that the legislature may from their present knowledge feel incompetent to draw that line. They may feel sure that barbers should fall on the prohibited side, and yet be in just doubt as to other occupations. Can it be said, then, that the legislature might not have had a reasonable ground for declining to carry their prohibition to its utmost extent? If not, then there is a conceivable reason why it should have stopped where it did. If, whenever a mischief arose in any particular instance, it were necessary for the legislature to consider all other possible instances to which they might think the mischief applied, legislation would indeed be a slow process.

There has been a tendency in some of our States, especially in Illinois, to drift away from what is here conceived as the proper view of the power of a legislature to pass "special legislation." On the other hand, the